

Applicant(s): P. Bonutti
Application No.: 10/685,117
Examiner: G. Jackson

Remarks

Claims 4-33 are pending in the application and are presented for the Examiner's review and consideration. Claims 4, 8, and 13-15 have been amended, and claims 1-3 are canceled. Applicant believes the claim amendments, cancellations, and accompanying remarks herein serve to clarify the present invention and are independent of patentability. No new matter has been added.

Allowed Subject Matter

Applicant acknowledges with appreciation that claims 23-33 are allowed.

35 U.S.C. §101

Claims 4-22 were rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. As suggested by the Examiner, Applicant has changed the term "positioned" to "positionable" throughout the claims. Accordingly, Applicant submits that claims 4-22 meet the requirements of §101.

35 U.S.C. §103

Claims 4-6 and 13-22 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,219,359 to McQuilkin *et al.* (hereinafter "McQuilkin"), U.S. Patent No. 4,823,794 to Pierce (hereinafter "Pierce"), and U.S. Patent No. 5,366,480 to Corriveau *et al.* (hereinafter "Corriveau"). In response, Applicant respectfully submits that this rejection should be withdrawn.

McQuilkin discloses a suture apparatus including an elongate length of suture and first and second pledgets each having a generally rectangular or oval plate of bio-compatible material. (col. 1, ins. 8-20). The pledgets are preferably made of Teflon but could be made from other materials including Dacron/Carbon. (col. 3, ins. 20-22).

Pierce discloses a surgical pledget having a suture entrance slit extending through the

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pledget from a side wall to a central suture location with the pledget and means for retaining a suture at the suture location. (abstract). The pledget includes a body formed from a conventional pledget material such as felt, polyurethane foam or Teflon. (col. 2, lns. 61-63).

Corriveau discloses a buttressing pledget manufactured from a synthetic elastomeric material. The elastomeric material can be nonporous, radiolucent, and/or a silicone rubber. The pledget can be made radiopaque by the addition of a suitable material, such as barium sulfate. The pledget can be combined with a surgical suture or ligature. (abstract).

In contrast, Applicant discloses, *inter alia*, a pair of plate members and a bone suture assembly used to stabilize a fractured bone. The plate members may be formed of metal or a polymeric material. (§0129). The plate members are rigid and are shaped to engage the bone. (§0130).

As such, Applicant contends that the cited references do not teach or suggest the use of a bone plate. Bone plates, by definition, are rigid members capable of maintaining alignment of broken bones. The pledgets disclosed by McQuilken, Pierce, and Corriveau are not bone plates. Rather, they are tufts made from Teflon, felt, and elastomeric material.

Independent claim 4 recites a bone suture assembly having, *inter alia*, two bone plates, a suture, and at least one fastener. Applicant contends that the cited references do not teach or suggest the combination of a suture, at least one fastener, and two bone plates. Accordingly, Applicant submits that independent claim 4 is patentable over McQuilken, Pierce, and Corriveau. Based on at least their dependencies, Applicant submits that claims 5 and 6 are patentable as well.

Independent claim 13 recites a bone suture assembly having, *inter alia*, a suture, a suture anchor, and a bone plate positionable between the suture anchor and a bone. Applicant contends that the cited references do not teach or suggest the combination of a suture, a suture anchor, and a bone plate. Accordingly, Applicant submits that independent claim 13 is patentable over the cited references. Based on at least their dependencies, Applicant submits that claims 14-33 are patentable as well.

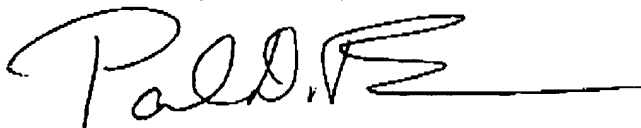
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Conclusion

In light of the foregoing remarks, this application is now in condition for allowance and early passage of this case to issue is respectfully requested. If any questions remain regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

No fee is believed to be due for this submission. However, please charge any required fee (or credit any overpayments of fees) to the Deposit Account of the undersigned, Account No. 503410 (Docket No. 782-A03-009-3).

Respectfully submitted,



Paul D. Bianco, Reg. # 43,500

Customer Number: 33771
Paul D. Bianco
FLEIT KAJN GIBBONS GUTMAN BONGINI & BIANCO
601 Brickell Key Drive, Suite 404
Miami, Florida 33131
Tel: 305-931-9620; Fax: 305-931-9627
e-mail: pbianco@focusonip.com